IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1130 OF 2006 IN EXA. NO.355 OF 2006
IN
SUMMARY SUIT NO.1470 OF 2005

Hirachand H. Vora. ..Plaintiff.
Vs.
M/s. MTZ Industries Ltd. ..Defendants.

Ms. Nita Solanki i/by Kiran Jain & Co. for the plaintiff.

Mr. H.N. Thakur with Ms. Agnes Baradia i/by Thakore Jariwala & Associates for the Defendants.

CORAM : R.S. MOHITE,J.
DATED : 17/10/2006.

P.C.

1. This chamber summons is taken out in execution proceeding for setting aside the attachment of the movable and immovable property of the defendants and raising warrant of attachment dated 18.7.2006. It appears that the plaintiff had filed money suit for recovery of amount due against the defendants on 20.4.2005. The summons were served upon the defendants on 23.6.2005. Before the summons were served upon the defendants, on 22.6.2005, company made reference before the BIFR. It appears that the defendants did not appear in pursuance of the summons and the exparte decree came to be passed when the BIFR proceeding was pending. The Advocate for the company states that the proceeding

before the BIFR is still pending. It is sought to be contended that the court could not have passed exparte order in view of the provisions contained in Section 22 of the SICA Act. On behalf of the plaintiff, it is contended that the decree can be set aside in the pending notice of motion which has been filed in the pending decree. I however, find that the execution application itself would not lie. Even after there is decree passed, separate proceeding is required to be taken for execution of the decree. In the circumstances, chamber summons is made absolute in terms of prayer clause (a) with liberty to the plaintiff to reapply for attachment if and when the BIFR proceeding is disposed off. Chamber summons stands disposed off.

(R.S. MOHITE, J.)